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In The
Supreme Court of the United States

STATE OF TENNESSEE,

Petitioner,

v.

GEORGE LANE, BEVERLY JONES AND UNITED STATES OF AMERICA,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF THE HONORABLE DICK THORNBURGH AND THE NATIONAL ORGANIZATION ON DISABILITY, THE AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES, AND ADA WATCH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE**

The *Amici Curiae* joining this brief include former Attorney General Dick Thornburgh, who played an instrumental role in the passage and implementation of the Americans with Disabilities Act (ADA), as well as national organizations that represent the interests of people with disabilities. The *amici* share a commitment to eradicating the debilitating obstacles faced by persons with disabilities and ensuring that persons with disabilities achieve equal access to state and local government programs and services. The *amici* have a strong interest in the effective enforcement of the ADA, and bring a unique understanding of the purpose and role of laws barring disability-based discrimination. A full recitation of their interests appears in the Appendix.

INTRODUCTION

The Americans with Disabilities Act ("ADA") has begun the process of transforming the American landscape and prevalent negative stereotypes about people with disabilities by promoting the integration of persons with disabilities into all aspects of public life.[1] By directly

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* The parties have consented to the filing of this brief. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amici Curiae*, or their counsel, made a monetary contribution to the preparation and submission of this brief.

[1] America's enactment of the landmark ADA has not only transformed American society, but also has acted as a powerful catalyst for people with disabilities all over the world who have drawn upon the law's example as they pursue legal equality in their own nations. In an unprecedented survey of international disability anti-discrimination

(Continued on following page)

addressing the state and local levels at which Americans commonly interact with their government, Title II of the ADA sought to redress exclusionary policies identified by Congress that were all the more invidious for their apparent self-justification: the less people with disabilities were seen, the more they could be assumed to be both unable and unwilling to fully participate in society.

The falseness of this twin burden of inability and disinterest cast upon people with disabilities has become self-evident in the years since the ADA has come into effect. The law's successes in increasing the accessibility of public transportation, courtrooms, voting, and higher education has begun to remedy years of state-sponsored segregation and exclusion. By allowing people with disabilities to be seen and accepted as participating members

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provisions, authors Theresia Degener and Gerard Quinn found that over 40 countries have enacted domestic disability anti-discrimination provisions since the passage of the ADA. Theresia Degener and Gerard Quinn, *A Survey of International, Comparative and Regional Disability Law Reform*, in *Disability Rights Law and Policy: International and National Perspectives* 3 (M. Breslin & S. Yee, eds., 2002). Degener has stated that "US law has been instrumental in the evolution of disability discrimination law in many countries. Especially, the Americans with Disabilities Act (ADA) of 1990, has had such an enormous impact on foreign law development that one might feel inclined to say that the international impact of this law was larger than its domestic effect." Theresia Degener, *Disability Discrimination Law: A Global Comparative Approach*, 2 (Paper presented at Disability Rights in Europe: From Theory to Practice 25-26 September 2003, University of Leeds). This pronouncement could prove ironically true if legal protections for people with disabilities are now gutted in the very country which first enacted the law that has inspired so much international progress towards equality for people with disabilities.

of our society, the Act has dispelled prevailing myths, fears and prejudices.

While change is often gradual and there is still much left to be done, persons with disabilities are finally beginning to enjoy their rights as citizens. At the same time, fears of enormous disruption and devastating financial effects have been proven unfounded. In largest measure, this is the result of Congress's crafting of fair and reasonable provisions after extensive study and the careful balancing of interests. The ADA is the culmination of more than twenty years of fact-finding, study, and incremental legislation to address the widespread exclusion and segregation of Americans with disabilities.[2] The successes achieved through implementation of the Act, coupled with the ability of the states and other covered entities to achieve accessibility over time and without causing undue administrative or financial hardship, confirm that Congress indeed fashioned a proportionate and congruent remedy to deter and remedy historic disability-based discrimination.

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[2] With respect to the ADA alone, Congress held fourteen hearings and sixty-three field hearings, considered innumerable studies and reports evaluating the discriminatory treatment of persons with disabilities, issued five committee reports, and engaged in prolonged floor debate. Timothy M. Cook, *The Americans with Disabilities Act: The Move to Integration*, 64 Temp. L. Rev. 393, 393, 414 (1991). The consensus that the ADA was needed to remedy and deter historic discrimination is reflected in the overwhelming passage of the final bill by 91-6 in the Senate and 377-28 in the House of Representatives. *See* 136 Cong. Rec. 17,376 (1990) (showing Senate approval of the Conference Committee Report); 136 Cong. Rec. 17,296-97 (1990) (showing House approval of the Conference Committee Report). *See also* Lowell P. Weicker, Jr., *Historical Background of the Americans with Disabilities Act*, 64 Temp. L. Rev. 387, 387-391 (1991).

The hard-fought gains recently achieved by the passage and enforcement of the ADA, and the promise of greater equality and opportunity in the years to come, are threatened by the states' ongoing and broad-based challenges to the constitutional validity of the Act. While this case questions Congress's authority to enact the ADA under Section 5 of the Fourteenth Amendment, other state-sponsored appeals challenge the Commerce Clause and the Spending Clause as authority for federal disability rights legislation. If the Court does not take this opportunity to uphold Title II of the ADA under Section 5, federal disability laws that are just beginning to enable disabled persons to participate in critical facets of American life will be undermined before the goal of full integration has been achieved.

ARGUMENT

As this Court has recently reiterated, "Section 5 of the Fourteenth Amendment grants Congress the power to enforce the substantive guarantees contained in § 1 by enacting 'appropriate legislation.'" *Board of Trs. v. Garrett*, 531 U.S. 356, 365 (2001). This power "includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 81 (2000); *see also City of Boerne v. Flores*, 521 U.S. 507, 536 (1997). Where legislation reaches beyond the scope of Section 1's actual guarantees, this Court has held that it must exhibit "congruence and proportionality between the injury to be prevented or

remedied and the means adopted to that end." *City of Boerne*, 521 U.S. at 520, cited in *Garrett*, 531 U.S. at 365.

Accordingly, in this case, the Respondents and their *amici* have demonstrated a long history and pattern of unconstitutional conduct in the administration of those very activities regulated by Title II – the "services, programs, [and] activities" of the state. As set forth in the briefs submitted, state conduct excluded and, too often, continues to exclude, disabled persons from the judicial system, public education, public transportation, voting, and other basic government services. Congress took care to document the shameful legacy of state-sponsored discrimination in the voluminous legislative history of the ADA, and to craft the congruent and proportional response found in Title II of the Act.

I. TITLE II OF THE ADA IS BEGINNING TO ALLOW PERSONS WITH DISABILITIES TO PARTICIPATE IN PUBLIC LIFE.

"Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." *Romer v. Evans*, 517 U.S. 620, 633 (1996) (Kennedy, J.). Title II is critical to people with disabilities attempting to exercise such fundamental rights of citizenship as access to the courts, service with their peers on juries, the right to vote, the ability to enter and communicate in the halls

of city council, and the ability to receive state services in the community, free of institutional segregation.[3]

After the ADA's enactment, the National Council on Disability (NCD) found that "[v]illages, cities, counties, and States are looking at people with disabilities as real citizens. . . . Local and state government programs and facilities have become much more accessible."[4] The ADA's mandate that persons with disabilities have equal access to the basic institutions of state and local governments has resulted in substantially improved integration and inclusion over the past decade.[5]

[3] Although the bar of the Eleventh Amendment does not apply to local government agencies, there is no bright line test to determine whether a public entity will be considered an "arm of the state" for immunity purposes. Rather, courts must undertake a fact-specific, multi-factor inquiry based in large part on state law, funding, and structure. For example, county courts may or may not be immune under the Eleventh Amendment. *Compare Chisolm v. McManimon*, 275 F.3d 315, 323 (3d Cir. 2001) (county court is not an arm of the state) *with Popovich v. Cuyahoga County Ct. Com. Pl.*, 276 F.3d 808, 811 (6th Cir.) (court assumes state immunity would apply), *cert. denied*, 123 S. Ct. 72 (2002). *See also Callahan v. City of Philadelphia*, 207 F.3d 668, 670-74 (3d Cir. 2000) (municipal courts are arms of the state); *Kelly v. Municipal Courts*, 97 F.3d 902, 907-08 (7th Cir. 1996) (municipal court is arm of the state). Likewise, transit authorities have and have not been considered arms of the state for Eleventh Amendment purposes. *Compare Morris v. Washington Metro. Area Transit Auth.*, 781 F.2d 218, 224-25 (D.C. Cir. 1986) (transit authority entitled to Eleventh Amendment immunity) *with Feary v. Reg'l Transit Auth.*, 685 F. Supp. 137, 139-142 (E.D. La. 1988) (transit authority not arm of state).

[4] National Council on Disability, *Voices of Freedom: America Speaks Out on the ADA* [hereinafter *Voices of Freedom*] (1995), *at* Abstract, *at* http://www.ncd.gov/newsroom/publications/pdf/voices.pdf.

[5] *See, e.g.*, U.S. Dep't of Justice Disability Rights Section, [DOJ], *Enforcing the ADA: Looking Back on a Decade of Progress* [hereinafter

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While the ADA has been an invaluable stimulus for state self-examination and voluntary compliance, individuals with disabilities must have the right to file complaints and bring lawsuits seeking injunctive relief and damages. In many cases, damages are the only means to remedy the very real injuries caused by the state's unlawful and willful neglect. Without the right to seek damages where necessary, people with disabilities – already subject to higher rates of unemployment, poverty and social stigma – would have little incentive to bear the financial and personal burdens of initiating change.

A. Accessibility of Courts and Other Government Buildings

Equal participation in the justice system, whether as a party, witness, juror or advocate, is integral to the American way of life. This simple truth notwithstanding, the justice system itself can present tremendous barriers to the American way of life for people with disabilities. The facts of this case demonstrate the many ways that denial of courthouse access can gravely undermine the fundamental principle of open and impartial government embraced in *Romer*, 517 U.S. at 633.[6]

Enforcing the ADA] 4-8 (2000), *at* http://www.ada.gov/pubs/10thrpt.pdf; *Voices of Freedom*, *supra* note 4.

[6] Indeed, the State of Tennessee acknowledged years ago that "[f]or persons with significant physical or mental impairment, the system can be quite literally inaccessible." Comm'n on the Future of the Tennessee Judicial System, *Final Report* 31 (1996), *at* http://www.tsc.state.tn.us/geninfo/publications/futures.pdf.

George Lane, the Respondent in this case, could not appear at his own trial without having to crawl up two flights of steps, and was arrested when he refused to crawl further or be carried. Eventually the problem was "solved" by having Mr. Lane's lawyer run back and forth between his client and the second floor courtroom, denying Mr. Lane the ability to be present at proceedings critical to his case. Similarly, Plaintiff Ramsey, who is unable to climb stairs, had judgment entered against him for a failure to appear, despite the fact that he was in the courthouse. *See* Pet. App. 9, 15-16.

The Petitioner could have simply relocated Mr. Lane's and Mr. Ramsey's trials to a first floor, accessible courtroom. Instead, the Petitioner chose to exclude these citizens entirely from their day in court, denying them any remnant of due process. Moreover, exclusion from courthouses affect more than those persons directly involved in judicial matters since courthouses also function as centers of government and places of public meeting. Plaintiff Cantrel, who has paraplegia, could not attend a County Commission meeting without suffering the indignity and danger of crawling up the courthouse steps. *See* Pet. App. 3. The Plaintiffs' experiences are not unique. People with disabilities experience exclusion in a myriad of ways,[7] from jury selection procedures that eliminate people with a

[7] *See generally* American Bar Association & National Judicial College, *Court-Related Needs of the Elderly and Persons with Disabilities, Recommendations of the February 1991 Conference* (1991); Jeanne Dooley & Erica Wood, *Opening the Courthouse Door: The Americans with Disabilities Act's Impact on the Courts*, 76 Judicature 39 (1992); Keri K. Gould, *And Equal Participation for All . . . The Americans with Disabilities Act in the Courtroom*, 8 J.L. & Health 123 (1993/1994).

variety of disabilities to the lack of sign interpreters for parties and witnesses who are deaf.[8]

In many instances, the modifications needed by many disabled persons seeking access to the halls of the judiciary and other government buildings are modest.[9] Nonetheless, people with disabilities often are refused access not because they need complicated or expensive accommodations, but because they encounter exclusionary policies and attitudes that have never been critically examined. The ADA requires that critical self-examination take place.[10]

The ADA's initiation of self-examination is an important part of its effectiveness in starting necessary systemic change in state courthouses. For example, in 1995, the California Judicial Council's Subcommittee on Access for People with Disabilities began "implementing the Act [ADA] in California's courts by sponsoring comprehensive research projects and adopting a series of recommendations to increase court accessibility to persons with disabilities."[11] This research revealed that significant

[8] *See, e.g., Popovich*, 276 F.3d at 811; *Armstrong v. Davis*, 275 F.3d 849, 857 & n.11 (9th Cir. 2001), *cert. denied*, 123 S. Ct. 72 (2002); *Galloway v. Superior Court*, 816 F. Supp. 12, 15 (D.D.C. 1993) (striking down categorical exclusion of blind persons from jury service).

[9] *See, e.g., People v. Caldwell*, 603 N.Y.S.2d 713, 714 (N.Y. Crim. Ct. 1993) (juror required seat moved closer to witness box, enlarged print versions of tape transcripts used at trial, and reading documents into the record).

[10] *See* 28 C.F.R. § 35.105(a) (1993).

[11] Maryann Jones, *And Access For All: Accommodating Individuals with Disabilities in the California Courts*, 32 U.S.F. L. Rev. 75, 75 (1997); *see also* Access for Persons with Disabilities Subcommittee, Judicial

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problems persisted: "A majority of the respondents (52 percent) said that they had not received requested accommodations, and nearly half (42 percent) concluded that courts do not meet ADA standards."[12] Based on this review, the Judicial Council took numerous affirmative steps, including statewide training of courthouse ADA coordinators, the development of a nationally circulated video on disability obstacles in the courts, and the adoption of Rule of Court 989.3, which is meant to "assure that qualified individuals with disabilities have equal and full access to the judicial system."[13] Numerous courts have undertaken similar efforts, including user surveys, barrier removal, and the institution of complaint procedures.[14]

Council of California, *Summary of Survey and Public Hearing Reports of the Access for Persons with Disabilities Subcommittee of the California Judicial Council's Access and Fairness Advisory Committee* 1 (1997), *at* http://www.courtinfo.ca.gov/reference/documents/summarydisabilities.pdf.

[12] American Bar Ass'n Commission on Mental and Physical Disability Law, *Disability Law and Policy: A Collective Vision* 50 (1999). Other state surveys have also found widespread non-compliance with the ADA. *See, e.g.*, Phyllis S. Launius, *Removing Public Access Barriers to the Courts in the New Millennium: A Sampling and Analysis of Missouri's Trial Courts* 3-4 (2000) (study for the Missouri Office of State Courts Administrator observing that "only 26 percent of this sample's accessed areas are compliant with ADA standards"); Governor's Comm. on Disability Issues and Employment Civil and Legal Rights Subcomm., *Interim Court and Courthouse Access Project* 1 (2000) (noting "serious access problems in the courts and courthouses in Washington").

[13] *See* Judicial Council of California, *Fact Sheet: Access and Fairness* (June 2003), *at* http://www.courtinfo.ca.gov/reference/documents/accfair.pdf; Judicial Council of California, *Programs: Access and Fairness* (2003), *at* http://www.courtinfo.ca.gov/programs/access/activities.htm; Cal. R. Ct. 989.3(a).

[14] *See, e.g.*, Ernest J. Comer, *Implementation of the Americans with Disabilities Act in the New Jersey Judicial System* (National Center for State

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Furthermore, federal Department of Justice ADA enforcement efforts have achieved increased access in hundreds of key governmental buildings, from courthouses to city halls to state capitol buildings, throughout the 50 states.[15] However, as with other civil rights laws, private suits are a key enforcement tool.[16] In cases of injurious

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Courts 2002) (discussing New Jersey judiciary's accessibility plan, begun in 1993), *at* http://www.ncsconline.org/WC/Publications/CS_AmeDisActNJPub.pdf; Mark Van Bever, *Implementing the Americans with Disabilities Act in a Trial Court* (National Center for State Courts 2002) (discussing ADA compliance efforts of Florida's Eighteenth Judicial Circuit), *at* http://www.ncsconline.org/WC/Publications/CS_AmeDisActImpNJPub.pdf. The courts self-assessment process has often resulted in voluntary compliance. *See Voices of Freedom*, *supra* note 4 (describing access improvements to basic government facilities and public meetings in the five years after the ADA's enactment in dozens of locations throughout all 50 states).

[15] There has been extensive administrative and court activity in this area. The Justice Department has investigated and settled complaints in almost every state in the nation. *See, e.g.*, DOJ, *Final Settlement Agreement between the U.S. and Metropolitan Government of Nashville and Davidson County, Tennessee* (2003), *at* http://www.ada.gov/nashvil2.htm (physical barrier removal); DOJ, *Settlement Agreement between the U.S. and Hancock County, Mississippi* (2003), *at* http://www.ada.gov/hancocks.htm (provision of effective communication services for jurors who are deaf or hard of hearing); DOJ, *Settlement Agreement Between the U.S. and the Santa Clara County Superior Court* (2003), *at* http://www.usdoj.gov/crt/ada/santacl.htm (provision of auxiliary aids and services for persons with hearing impairments). *See also* DOJ, *10th Anniversary of the ADA Press Page* (2000), *at* http://www.ada.gov/archive/10anpage.htm (providing links to regional reports describing at least 50 examples of cities and states improving city halls and other basic government buildings and programs); DOJ, *Project Civic Access* (2003), *at* http://www.ada.gov/civicac.htm (providing links to 56 settlement agreements with cities, counties, and states).

[16] *See, e.g.*, *Layton v. Elder*, 143 F.3d 469, 472 (8th Cir. 1999) (remanding for entry of injunction against inaccessible courthouse); *Matthews v. Jefferson*, 29 F. Supp. 2d 525, 233-34 (W.D. Ark. 1998) (ordering summary judgment to plaintiffs after Court scheduled three

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conduct, often the only effective remedy is money damages. *See, e.g., Barnes v. Gorman*, 122 S. Ct. 2097, 2099-2100 (2002) (describing injuries experienced by paraplegic plaintiff transported in a hazardous manner by police, including shoulder and back injuries, bladder infection, and spasms leaving him unable to work full-time). As this Court recognized in *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narcotics*, 403 U.S. 388, 410 (1971), sometimes "it is damages or nothing."

B. Voting Accessibility

The ability to vote is something most Americans take for granted and associate with membership in a democratic society. The fact that this basic right is still inaccessible to many individuals with disabilities demonstrates the extreme degree to which the needs of disabled citizens have been ignored by state election officials.[17] During the 1998 Congressional elections, approximately 20,000 polling places were inaccessible to wheelchair users.[18] Of

hearings in inaccessible courtroom for paraplegic who had to be carried and had no access to bathroom).

[17] In addition to the barriers to voting access identified above, at least forty-two states totally disenfranchise citizens with mental disabilities in a variety of contexts. *See* Kay Schriner et al., *Democratic Dilemmas: Notes on the ADA and Voting Rights of People with Cognitive and Emotional Impairments*, 21 Berkeley J. Emp. & Lab. L. 437, 456 tbl. 2 (2000); *see also Doe v. Rowe*, 156 F. Supp. 2d 35, 38 & n.2 (D. Me. 2001) (noting disenfranchisement of persons with disabilities in Maine and other states).

[18] National Council on Disability, *Inclusive Federal Election Reform* (2001), *at* http://www.ncd.gov/newsroom/publications/pdf/electionreform.pdf; Coalition for Accessible Political Elections (CAPE), *Report of the*

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those voters with disabilities who could reach the polling area, fifty-two percent found that the area lacked a designated, appropriately sized voting booth for them to cast their vote.[19] Seventy-three percent of the polling places in the major urban center of Philadelphia were physically inaccessible to voters with disabilities.[20] Eighty-one percent of voters who are blind or visually impaired had to rely on others to mark their ballots for them.[21] Perhaps most disturbing, more than ten years after the ADA was enacted, accessibility is often not even considered a factor in choosing polling sites.[22]

As with other areas where exclusion and segregation of people with disabilities has resulted in inaccessible public services, Title II provides an important vehicle to promote access and awareness.[23] Cases brought under the

National Voter Independence Project [hereinafter NVIP Report], *at* http://www.nhdde.com/publications/PollingFinalReport.pdf.

[19] NVIP Report, *supra* note 18.

[20] *Inclusive Federal Election Reform*, *supra* note 18.

[21] *Id.*

[22] Center for an Accessible Society, *8 out of 10 Polling Sites have Access Barriers, Says GAO Report* (2001), *at* http://www.accessiblesociety.org/topics/voting/gaovoterept1101.htm.

[23] Voting was plainly one of the concerns addressed in the Senate Report accompanying the Act and debated on the floor. *See* S. Rep. No. 101-116, at 12 (1989) (quoting Illinois Attorney General, who stated that "[y]ou cannot exercise one of your most basic rights as an American if the polling places are not accessible."). *See also* 135 Cong. Rec. S10753 (daily ed. Sept. 7, 1989) (remarks of Senator Gore: "As a practical matter, many Americans with disabilities find it impossible to vote. Obviously, such a situation is completely unacceptable and unconscionable. We must take strong action to end the tradition of blatant and subtle discrimination that has made people with disability second-class citizens.").

ADA are challenging inaccessible polling places, and are resulting in greater awareness by state and local voting officials. For example, the disability community in Texas filed lawsuits that resulted in cooperative efforts with election officials. Counsel for plaintiffs, James Harrington, writes that "[t]o their credit, each County showed great willingness to participate in significant negotiations. Local officials were keen on making their voting systems usable by people who are blind. This spirit of negotiation produced great creativity."[24] And, eventually, awareness of the needs of voters with disabilities became a statewide concern. As reported by Harrington, "successive Secretaries of State ... now facilitate and actively encourage access to the secret ballot for people with disabilities."[25]

These types of lawsuits have shown that solutions are possible, and have been used by other groups to bring suits under the ADA.[26] Because of the ADA, there have also been innovations in technology which foresee a future where

[24] James C. Harrington, *Pencils Within Reach and A Walkman or Two: Making the Secret Ballot Available to Voters Who are Blind or Have Other Physical Disabilities*, 4 Tex. F. on C.L. & C.R. 87, 95 (1999).

[25] *Id.* at 105.

[26] For example, a coalition of groups including the Eastern Paralyzed Veterans Association and the Blinded Veterans of America began class-action lawsuits against Washington, D.C., and Philadelphia, Pennsylvania, using examples like Harris County, Texas, the nation's third largest county, which had already put accessible voting systems in place. American Association of People with Disabilities, *New GAO Report Shows Disabled are Denied Voting Access* (2001), *at* http://www.aapd.com/docs/Gao101601.html.

the gross inequality in voting access will be a thing of the past.[27]

C. Community Integration

Perhaps the most basic, yet profound impact of the ADA is the gradual reversal of a shameful history of unnecessary segregation of people with disabilities in large, state-operated institutions.[28] This Court's decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), has spawned a national examination of the extreme harm caused by institutionalization. As this Court stated in *Olmstead*, 527 U.S. at 601, "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." Accordingly, the court

[27] Although the Federal Election Commission estimates that 20,000 of the country's 27,000 polling sites do not meet ADA requirements, new technology is being developed and tested to achieve compliance. For example, emerging technology allows a visually impaired voter to have the ballot read to him or her, and a hearing impaired voter to utilize a hearing aid compatible headset. John M. Williams, *Making Access to the Ballot Box a Snap for Disabled Voters*, Bus. Week Online, Sept. 15, 1999, *at* http://www.businessweek.com/bwdaily/dnflash/sep1999/nf90915c.htm.

[28] The connection between segregation and discrimination was highlighted by Congress in three of the findings statements in the ADA. *See* 42 U.S.C. § 12101(a)(2) ("[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination ... continue to be a serious and pervasive social problem"); *id.* at § 12101(a)(3) ("[D]iscrimination against individuals with disabilities persist in such critical areas as ... institutionalization."); *id.* at § 12101(a)(5) ("[I]ndividuals with disabilities continually encounter various forms of discrimination, including ... segregation.").

found that under Title II of the ADA, states are required to provide community-based services when it is professionally advisable to do so and when the disabled individual so chooses. *Id.* at 607.

In response to *Olmstead*, federal officials with the Department of Health and Human Services issued a set of recommendations to state Medicaid directors, outlining principles for states to consider when developing their *Olmstead* plans.[29] The need for such planning is critical to the thousands of people nationwide who have been recommended for community placement but who remain waiting in institutions indefinitely.[30] A recent NCD report found that a majority of states still fail to plan for identifying and providing community placement for institutionalized persons who meet the *Olmstead* criteria, and that few plans contain timelines and targets for community placement or provide consistent opportunities for life in the most integrated setting.[31]

[29] Letter from Timothy M. Westmoreland, Director, Center for Medicaid and State Operations, Health Care Financing Administration, & Thomas Perez, Director, Office of Civil Rights, U.S. Dep't of Health and Human Services, to State Medicaid Directors (January 14, 2000), *at* http://www.cms.hhs.gov/states/letters/smd1140a.asp.

[30] *See* Sharon Davis, et al., The Arc, *A Status Report to the Nation on People with Mental Retardation Waiting for Community Services* (1997), *at* http://www.thearc.org/misc/WaitPage.html (noting over 5000 persons waiting in state institutions for community placement in 16 states reporting such data).

[31] *See* National Council on Disability, *Olmstead: Reclaiming Institutionalized Lives* (Full-Length On-Line Version) [hereinafter Reclaiming Institutionalized Lives] (August 19, 2003), *at* http://www.ncd.gov/newsroom/publications/reclaimlives.html.

Notably, Tennessee continues the historic practice of segregating persons with disabilities in state institutions.[32] A 2002 report found "that Tennessee ranked 45th in the provision of home and community based waiver services," and that the vast majority of the state's long-term care dollars went to institutional settings rather than home health care and other services that permit people with disabilities to live in the community.[33] According to NCD, the ability of the Tennessee disability coalition "to develop an *Olmstead* plan was severely curtailed by the refusal of the relevant state agencies to cooperate in the planning process in any meaningful fashion."[34]

While change is slow, states are beginning to explore community-based options. As of December 2001, forty states, along with the District of Columbia, had commissions or task forces working to improve their state's management of long-term care,[35] and fourteen states had developed *Olmstead* plans as of May 2002.[36] State agencies are increasingly recognizing the basic principles of integration and community-based care, and are taking steps to

[32] Duren Cheek, *Lawmaker Pleads for Home-care Funds for Elderly*, Tennessean.com, May 19, 2000, *at* http://www.tennessean.com/sii/00/05/19/gacare19.shtml (noting State Representative John Arriola's comments that "Tennessee has sunk to dead last in the nation in providing alternatives to nursing home care").

[33] Reclaiming Institutionalized Lives, *supra* note 31, at ch. V.

[34] *Id.*

[35] Wendy Fox-Grage et al., National Conference of State Legislators, *The States' Response to the* Olmstead *Decision: How Are States Complying?* (2003), *at* http://www.ncsl.org/programs/health/forum/olmsreport.htm.

[36] Alexandra Stewart et al., Center for Health Care Strategies, Inc., *Implementing Community Integration: A review of State* Olmstead *Plans* 4 (2002), *at* http://www.chcs.org/publications/pdf/cas/stateOlmsteadplans.pdf.

follow the Federal mandate to design, deliver and finance community services.[37] *"Olmstead"* lawsuits are bringing pressure to bear, and have resulted in the increased availability of community options.[38]

There can be no doubt that the state initiatives in this area are a direct result of the ADA and this Court's *Olmstead* decision.[39] Vigorous enforcement by the federal

[37] *See Reclaiming Institutionalized Lives*, *supra* note 31. For example, Maine has instituted screening by an independent agency before admission to nursing facilities as a means of overcoming a systemic emphasis on institutionalization, while advocates in Colorado and Kansas work to identify individuals in nursing facilities who could move to more integrated settings. Vermont and New Hampshire are beginning to close group homes in favor of individual or companion homes in an effort to provide "the most integrated setting." Under the influence of the Department of Health and Human Services' Office of Civil Rights, the most recent *Olmstead* plans are beginning to incorporate critical input from housing agencies.

[38] *See, e.g.*, *Barthelemy v. Louisiana Dept. of Health & Hosp.*, No. Civ.A. 00-1083, 2003 WL 1733534 (E.D. La. Mar. 31, 2003); *Rolland v. Cellucci*, 198 F. Supp. 2d 25 (D. Mass. 2002); *see also* Gary A. Smith, National Ass'n of State Directors of Developmental Disabilities Servs., Inc., *Status Report: Litigation Concerning Medical Services for Persons with Developmental Disabilities* 15-19 (2001), *at* http://www.qualitymall.org/download/litigation.pdf (collecting cases).

[39] For example, as the Ohio *Olmstead* plan states, "[s]tate policy makers *must continue to be responsive to the Health Care Financing Administration and the federal Office of Civil Rights to assure Ohio's compliance with the mandates of the Americans with Disabilities Act.*" (emphasis added) Thomas W. Johnson et al., Office of Budget and Management, *Ohio Access for People with Disabilities: Final Report to Governor Taft* 3 (2001), *at* http://www.state.oh.us/age/ohioaccessrpt.pdf (emphasis added). The Introduction to the Missouri plan states that its Home and Community-Based Services and Consumer-Directed Care Commission was established *"[t]o address the implications of the Olmstead decision,"* and that *"[t]he objective of the Commission was to develop a 'comprehensive, effectively, working plan' as recommended by the*

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government and private litigants remains essential to ensure compliance with *Olmstead*.

D. Public Transportation

Similar to the observation in *Olmstead* that "confinement in an institution severely diminishes the everyday life activities of individuals," 527 U.S. at 601, so too does the lack of accessible public transportation "severely diminish" other important life activities. As noted by Senator Dole, "Transportation is the critical link to employment. This bill will result in accessible public transportation to and from the work site. Living independently and with dignity means opportunity to participate fully in every activity of daily life, be it going to the movies, dining in a restaurant, cheering at a baseball game, communicating by phone or going to the doctor." 136 Cong. Rec. 17,376 (daily ed. July 13, 1990).

People with disabilities have historically been denied access to public life by the failure to make public transportation accessible. The accessibility of buildings as well as employment and education opportunities are meaningless when people with disabilities have no way to reliably and inexpensively reach their destinations. It is not possible to overstate the differences that Title II has made for people with disabilities who need to use public

U.S. Supreme Court Olmstead decision." Home and Community-Based Servs. and Consumer-Directed Care Comm'n, *Working Plan*, *at* http://www.dolir.state.mo.us/gcd/olmstead/olmreport/coverpage.htm (emphasis added). It should be stressed that without Section 5 authority for Title II, this crucial area of progress could be left without other valid constitutional grounding. *See infra* section III.

transportation. The comprehensiveness of the ADA mandate – cutting across all modes of transportation (from fixed-route buses to light rail transit to cross-country trains) – is critical to the law's success in actually changing how public transportation is provided across the nation.[40]

Prior to the ADA's enactment, "the provision of accessible transportation in the United States was always varied and uneven. Uniform accessible transportation did not exist until it was required by the passage of the Americans with Disabilities Act of 1990."[41]

The ADA's directive to public transit authorities, that vehicles leased or purchased after specified dates be "readily accessible to and usable by individuals with

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[40] The ADA's comprehensive transportation mandate was thoroughly studied and reviewed during the ADA's development and enactment. *See* Americans with Disabilities Act: Hearings before the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation on H.R. 2273, 101st Cong. 56 (1989) (Testimony of Larry Roffee, Executive Director of the Architectural and Transportation Barriers Compliance Board: "Through conducting public forums around the country and sponsoring research projects and studies, the Access Board has gathered extensive information about the extent and effects of discriminatory barriers experienced by persons with disabilities in public accommodations and public transportation. The Access Board has carefully analyzed the provisions of the Americans with Disabilities Act which have passed the Senate and believes that they provide a comprehensive solution to removing these barriers.").

[41] Rosalyn M. Simon, *Status of Transportation Accessibility in the United States: Impact of the Americans with Disabilities Act* [hereinafter Status of Transportation Accessibility], *in* Proceedings of Seminar Held at the Planning and Transportation Research and Computation European Transport Forum § 1.2 (1996).

disabilities,"[42] initiated significant measurable changes in national transportation accessibility. As Rosalyn M. Simon notes:

> In 1989, one-third (36%) of the national bus fleet was accessible. Post-ADA fixed route bus accessibility increased to 39 percent in 1990, 46 percent in 1991, and 52 percent in 1992. . . . [T]he federal government reported the national bus fleet as 55 percent accessible . . . in 1994 and 60 percent accessible . . . in 1995. Their projections indicate that by 2002, the national bus fleet will be 100 percent lift/ramp-equipped. In addition, by 2005, all fixed route buses will also be equipped with ADA-compliant communication systems . . . More than 100 public transit systems are now providing 100 percent accessible fixed route bus service during peak hours.[43]

These dramatic improvements in accessibility are directly attributable to Congress's establishment of broad national standards for public transportation accessibility, standards which were crafted following years of negotiation with transit authorities. Without the ADA, the interstate mobility of people with disabilities would always be subject to substantive and technical differences in state accessibility requirements. At the same time, the provisions are reasonable and gradual. Based on the turnover of vehicles, a natural consequence of normal wear and tear and technical obsolescence, the ADA's transportation rules comprise a flexible and proportionate approach.

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[42] 42 U.S.C. § 12142(a)-(c) (collectively encompassing new, used and remanufactured vehicles).

[43] Status of Transportation Accessibility, *supra* note 41, at § 3.1.

II. THE SCOPE OF REMEDIAL RELIEF AVAILABLE FURTHER CONFIRMS THE PROPORTIONALITY OF CONGRESS'S REMEDIES.

Congress took appropriate and reasonable steps to ensure that people with disabilities have access to government programs. Congress did not order immediate physical access, crafting instead a gradual and reasonable program of self-evaluation and transition.[44] In fact, the physical accessibility requirements only apply to construction after the date of the ADA's enactment, or when "program accessibility" cannot be achieved in another way.[45] Under the flexible "program accessibility" standard, physical alterations are only one of several options that can be taken depending on the circumstances.

[44] Courts subject to the ADA were required to perform, within one year of the law's effective date, a self-assessment of all current services, policies and practices, and their effects. 28 C.F.R. § 35.105(a) (1993). According to a 1994 study conducted by David Pfeiffer and Joan Finn, based on questionnaires sent to local governments around the country as well as state and territorial governments, 85 percent of state and territorial government had conducted accessibility surveys of their courthouses, and 93 percent of municipal courthouses had conducted accessibility surveys. Pfeiffer and Finn posit that "it is not possible to say that these finding are due solely to the ADA, but certainly the ADA would appear to be a significant factor." David Pfeiffer & Joan Finn, *Survey Shows State, Territorial, Local Public Officials Implementing ADA*, 19 Mental & Physical Disability L. Rep. 537, 537-540 (1995).

[45] *See* 42 U.S.C. §§ 12131-12134; 28 C.F.R. § 35.130. Only buildings constructed after the ADA's effective date are required to meet specific accessibility requirements. *See* 28 C.F.R. § 35.151(a); 28 C.F.R. § 35.150(a), (b)(1).

In addition, for purposes of Title II, many courts have limited money damages to the most egregious cases.[46] This Court could similarly limit the money damages available in Title II cases if necessary to comport with this Court's prior Section 5 holdings. This result would be far preferable to the more draconian one of finding that Title II is not authorized by Section 5. Such an approach is consistent with established Court doctrine. *See Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 465-66 (1989) (courts should avoid interpretations that would render a statute unconstitutional).

[46] *See, e.g., Delano-Pyle v. Victoria County, Tex.*, 302 F.3d 567, 575 (5th Cir. 2002) ("[I]n order to receive compensatory damages for violations of [the ADA or the Rehabilitation Act], a plaintiff must show intentional discrimination."); *Garcia v. S.U.N.Y. Health Sci. Ctr. of Brooklyn*, 280 F.3d 98, 112 (2d Cir. 2001) ("[W]e hold that a private suit for money damages under Title II of the ADA may only be maintained against a state if the plaintiff can establish that the Title II violation was motivated by either discriminatory animus or ill will due to disability."); *Ferguson v. City of Phoenix*, 157 F.3d 668, 674 (9th Cir. 1998) ("[C]ompensatory damages are not available under Title II or § 504 absent a showing of discriminatory intent."); *see also Powers v. MJB Acquisition Corp.*, 184 F.3d 1147, 1153 (10th Cir. 1999) ("[E]ntitlement to compensatory damages under section 504 of the Rehabilitation Act requires proof that the defendant has intentionally discriminated against the plaintiff."); *Wood v. President and Trs. of Spring Hill Coll.*, 978 F.2d 1214, 1219-20 (11th Cir. 1992) ("[G]ood faith attempts to pursue legitimate ends are not sufficient to support an award of compensatory damages under section 504. . . . [C]ontrolling precedent on . . . section 504 actions under the Rehabilitation Act, indicates that compensatory damages are precluded in cases of unintentional discrimination, but are permissible on a showing of intentional discrimination."); *Panzardi-Santiago v. University of Puerto Rico*, 200 F. Supp. 2d 1, 20-21 (D. P.R. 2002) (requiring showing of intentional discrimination for damages under Rehabilitation Act).

As the Second Circuit has noted, "[g]overnment actions based on discriminatory animus or ill will towards the disabled are generally the same actions that are proscribed by the Fourteenth Amendment – *i.e.* conduct that is based on irrational prejudice or wholly lacking a legitimate government interest." *Garcia v. S.U.N.Y Health Sci. Ctr. of Brooklyn*, 280 F.3d 98, 111 (2d Cir. 2001). Given the "broader swath" of conduct that can be proscribed under Section 5 of the Fourteenth Amendment, a damage remedy certainly falls within constitutional bounds wherever intentional discrimination is found, regardless of whether the discrimination is akin to "deliberate indifference" or "discriminatory animus." *Cf. Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 290 (1989) (adopting "deliberate indifference" as standard for damages for discrimination prohibited by Title IX, which like Section 504 and Title II of the ADA adopts Title IV remedies, *see* 42 U.S.S. § 12133); *Ferguson v. City of Phoenix*, 157 F.3d 668, 675 (9th Cir. 1998). Permitting damages for violations evidencing deliberate indifference functions to remedy and deter state actions that are unconstitutional under the Fourteenth Amendment, and thus comports fully with this Court's prior Section 5 jurisprudence.

III. THE CONTRIBUTIONS OF THE ADA ARE THREATENED BY SOME STATES' ONGOING AND BROAD-BASED CONSTITUTIONAL CHALLENGES TO ITS VALIDITY.

The question now before this Court is whether Congress had the authority under Section 5 of the Fourteenth Amendment to enact Title II of the Americans with Disabilities Act, which permits individuals to seek money damages from the state to remedy disability discrimination.

While this case is limited to one relatively circumscribed, albeit critical, aspect of federal disability discrimination law – the availability of private suits for damages against states under Title II – this challenge is but one part of an ongoing effort by some states to be free of disability non-discrimination mandates. States are contesting whether Title II is facially constitutional through challenges to Title II actions against state officials for injunctive remedies.[47] States have also challenged specific applications of Title II as being beyond the reach of the Commerce Clause.[48]

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[47] Such challenges continue despite the recent acknowledgement by this Court of the continued viability of the *Ex Parte Young* doctrine in the context of Title I of the ADA. *Garreti*, 531 U.S. at 32 n.9 (citing *Ex Parte Young*, 209 U.S. 123 (1908)). *See, e.g.*, Defendant's Motion to Dismiss in *McCarthy v. Gilbert*, Civil Action No. 02-CV-600 (E.D. Tex.) (arguing that *Ex Parte Young* cannot be used to enforce Title II of the ADA or its regulations because Title II exceeds the scope of Congress's power under Section 5 and the Commerce Clause); Brief of Appellees in *Meyers v. Texas*, Case No. 02-50452 (5th Cir.) ("Because it offends fundamental notions of federalism to permit *Young* suits based on statutes Congress lacked authority to enact under Section 5, the Court should hold that there is no Eleventh Amendment exception permitting prospective enforcement of federal laws – like Title II – under which Congress did not abrogate Eleventh Amendment and sovereign immunity."); *see also Henrietta D. v. Bloomberg*, 331 F.3d 261, 287-89 (2d Cir. 2003) (dismissing state defendant's various arguments challenging *Ex Parte Young* relief); *Thompson v. Colorado*, 278 F.3d 1020, 1025 n.2 (10th Cir. 2001) (noting state's challenge to constitutionality of Title II under Commerce Clause after plaintiffs sought leave to amend complaint to add *Ex Parte Young* claim for injunctive relief). In their brief before this Court, Tennessee's *amici* similarly question whether Title II is a valid basis for an award of injunctive relief. *See* Brief of *Amici Curiae* Alabama et al., in Support of Petitioner 5.

[48] Several states, including Connecticut, Pennsylvania, North Carolina, Maryland, and Virginia, have argued that Congress lacked Commerce Clause authority specifically to regulate prisons under the

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States have attempted to minimize the impact of recent Section 5 rulings eliminating damages awards against states by referencing the availability of damages in cases brought under Section 504 of the Rehabilitation Act of 1973.[49] At the same time, however, states are continuing to challenge the constitutionality of such Section 504 claims. As the State of Tennessee notes in its brief, states have argued that they have not waived their sovereign immunity by accepting federal funds, an argument which has been correctly rejected by most federal appellate courts.[50] The states also continue to argue that the

ADA. *See* Brief for the Petitioners at 23-24, *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998) ("Neither the Commerce Clause nor the Fourteenth Amendment gives Congress the power to regulate the management of state prisoners."); *see also Amos v. Maryland Dep't of Public Safety & Corr. Servs.*, 178 F.3d 212, 214-15 (4th Cir. 1999), *vacated for rehearing en banc, subsequently dismissed pursuant to settlement*, 205 F.3d 687 (4th Cir. 2000); *Hicks v. Armstrong*, 116 F. Supp. 2d 287, 290 (D. Conn. 1999); *Saunders v. Horn*, 959 F. Supp. 689, 696-97 (E.D. Penn. 1997); *Pierce v. King*, 918 F. Supp. 932, 938 (E.D.N.C. 1996) (holding that Congress lacked Commerce Clause authority to regulate prisons under Title II, as prison labor does not substantially affect interstate commerce, citing *United States v. Lopez*, 514 U.S. 549 (1995)); *Staples v. Virginia Dept. of Corrs.*, 904 F. Supp. 487, 490 (E.D. Va. 1995).

[49] *See, e.g.*, Brief for Petitioners at 38, *Board of Trs. v. Garrett*, 531 U.S. 356 (2001) (No. 02-1667) (noting availability of "comparable injunctive and monetary remedies of the Rehabilitation Act"). This Court reaffirmed the availability of damages remedies under the Rehabilitation Act in *Barnes v. Gorman*, 122 S. Ct. 2097 (2002).

[50] *See* Brief of Petitioner at 36 n.9. *Cf. Garrett v. Bd. of Trs. of the Univ. of Alabama*, 344 F.3d 1288 (11th Cir. 2003); *Shepard v. Irving*, No. 02-1712, 2003 WL 21977963 (4th Cir. Aug. 20, 2003); *Koslow v. Pennsylvania Dep't of Corr.*, 302 F.3d 161 (3d Cir. 2002); *Robinson v. Kansas*, 295 F.3d 1183 (10th Cir. 2002) (Section 504 and Title VI); *Douglas v. California Dep't of Youth Auth.*, 271 F.3d 812 (9th Cir. 2002), *reh'g en banc denied*, 285 F.3d 1226 (9th Cir. 2002); *Nihiser v. Ohio*

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requirements of the Rehabilitation Act are not "reasonably related" to the purposes of the federal funds disbursed, or that conditioning the funds is somehow unconstitutionally coercive.[51]

CONCLUSION

The promise of the ADA is just beginning to be realized. States are making the basic vestiges of citizenship available to persons with disabilities for the first time in history. This progress is in keeping with the most fundamental principles of equality embodied in the Fourteenth Amendment. There can be no doubt that the invalidation of Congress's long and deliberative process in recognizing and remedying "the continuing existence of unfair and unnecessary discrimination and prejudice"[52] toward people with disabilities will impede continuing progress toward a nation where people with disabilities can participate fully in civic life.

Envt'l Prot. Agency, 269 F.3d 626 (6th Cir. 2001); *Jim C. v. United States*, 235 F.3d 1079 (8th Cir. 2000) (en banc), *cert. denied sub nom. Arkansas Dep't of Educ. v. Jim C.*, 121 S. Ct. 2591 (2001); *Stanley v. Litscher*, 213 F.3d 340 (7th Cir. 2000). *But see Pace v. Bogalusa City School Bd.*, 325 F.3d 609, *reh'g en banc granted*, 339 F.3d 348 (5th Cir. 2003); *Garcia*, 280 F.3d 98.

[51] *See, e.g., Lovell v. Chandler*, 303 F.3d 1039, 1051 (9th Cir. 2002), *cert. denied*, 537 U.S. 1105 (2003); *Koslow*, 302 F.3d at 173-76; *Jim C.*, 235 F.3d at 1081-82 (rejecting state's argument that Rehabilitation Act requirements upon federal funding were unduly coercive). However, in *Jim C.*, the dissenting four judges used the tests enunciated by this Court in *South Dakota v. Dole*, 483 U.S. 203 (1987), as the basis for opining that Congress lacked authority under the Spending Clause to enact Section 504. *Jim C.*, 235 F.3d at 1082-85 (8th Cir. 2000) (en banc).

[52] 42 U.S.C. § 12101(a)(9).

When President George H.W. Bush signed the Americans with Disabilities Act he stated:

> And today, America welcomes into the mainstream of life all of our fellow citizens with disabilities. We embrace you for your abilities and for your disabilities, for our similarities and indeed for our differences, for your past courage and your future dreams. Last year, we celebrated a victory of international freedom. Even the strongest person couldn't scale the Berlin Wall to gain the elusive promise of independence that lay just beyond. And so, together we rejoiced when that barrier fell.
>
> And now I sign legislation which takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp. Once again, we rejoice as this barrier falls for claiming together we will not accept, we will not excuse, we will not tolerate discrimination in America.[53]

[53] Reprinted in National Council on Disability, *Equality of Opportunity: The Making of the Americans with Disabilities Act* at App. G (1997), *at* http://www.ncd.gov/newsroom/publications/equality_2.html#g.

While progress has been great, the ADA is still an indispensable tool to put equal citizenship firmly within the grasp of Americans with disabilities.

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Respectfully submitted,

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APPENDIX

BIOGRAPHIES OF *AMICI CURIAE*

Dick Thornburgh served as Governor of Pennsylvania, Attorney General of the United States under Presidents Reagan and Bush, and the highest-ranking American at the United Nations. As Attorney General from 1988 to 1991, Thornburgh oversaw congressional debate and passage of the Americans with Disabilities Act (ADA). He subsequently developed regulations implementing that legislation. Attorney General Thornburgh has often referred to his tireless work to bring the ADA into law as one of his proudest moments. Attorney General Thornburgh is a founding member of the National Organization on Disability (N.O.D.) and currently serves as Vice-Chairman of the World Committee on Disability. He filed a brief *amicus curiae* regarding the *Olmstead* case in the United States Supreme Court on behalf of N.O.D., asserting the validity of the integration regulations he issued as Attorney General. It is Attorney General Thornburgh's view that it is critically important that this Court's decision in *Olmstead*, which has provided the needed impetus for states to reverse historic segregation, not be undermined by a holding that Congress lacked Constitutional authority to enact Title II. In 2001 he received the George Bush Medal for his service to persons with disabilities, and in 2003 he and his wife Ginny Thornburgh received the Henry B. Betts award. Together, the Thornburghs have worked in the public eye to maximize opportunities for persons with disabilities in their communities, jobs, schools and congregations. Attorney General Thornburgh is currently counsel to Kirkpatrick & Lockhart LLP, a national law firm, in its Washington, DC office.

The mission of the **National Organization on Disability (N.O.D.)** is to expand the participation and contribution of America's 54 million men, women and children with disabilities in all aspects of life. For more than 20 years, N.O.D. has built and sustained programs that raise disability awareness, encourage physical and attitudinal accessibility, make America's communities accessible, and provide opportunities for employment and growth. N.O.D. joined with other disability organizations and advocates in the effort to enact the ADA. Through business, community, association, and advocacy partnerships, including its Community Partnership Program and its C.E.O. Council, N.O.D. strives to eliminate barriers and to improve work opportunities for Americans with disabilities. N.O.D.'s leadership includes Honorary Chairman George H.W. Bush, Chairman Michael R. Deland, Vice Chairman Christopher Reeve, and President Alan Reich, together with a Board of Directors including business leaders and prominent disability advocates.

The **American Association of People with Disabilities (AAPD)** is a national non-profit, non-partisan membership organization whose mission is to promote the political and economic power of children and adults with disabilities in the U.S. Founded on the fifth anniversary of the Americans with Disabilities Act (ADA), AAPD has a strong interest in full and effective enforcement of that landmark law. With more than 60,000 members, AAPD is the largest cross-disability membership organization in the United States.

ADA Watch is a project of the **National Coalition for Disability Rights (NCDR)**, a nonprofit alliance of hundreds of organizations united to protect and promote

the civil rights of people with physical, mental, developmental, and cognitive disabilities. ADA Watch was founded to counteract threats to the enforcement of the Americans with Disabilities Act (ADA) and other federal disability rights laws.